

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 10.20.106 ) ON PROPOSED AMENDMENT  
relating to students placed )  
in education programs )

TO: All Concerned Persons

1. On January 21, 2003 at 10:00 a.m. a public hearing will be held in the conference room of the Office of Public Instruction, 1227 11th Avenue, Helena, Montana, to consider the amendment of a rule relating to students placed in education programs.

2. The Office of Public Instruction (OPI) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact OPI no later than 5:00 p.m. on January 9, 2003 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-1812, FAX: (406) 444-2893, e-mail: opirules@state.mt.us

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

10.20.106 STUDENTS PLACED IN EDUCATION PROGRAMS

(1) through (1)(c)(i) remain the same.

(ii) the student's education program is under the direction and supervision of the district and is provided by district staff or is provided pursuant to a special education individualized education program implemented by the district. This provision will be applied retroactively to July 1, 2002; and

(d) through (4) remain the same.

AUTH: Sec. 20-7-419, MCA

IMP: Sec. 20-5-321, MCA

4. Statement of Reasonable Necessity: The Superintendent of Public Instruction proposes to adopt an expansion of the rule pertaining to students placed in education programs. In June 2002, the Superintendent of Public Instruction adopted a new rule concerning this matter to clarify that the district tuition fund may not be used for payments to a private education program and also to clarify that the district responsible for paying a private education program for a student's education program may include that student in the district's enrollment count for ANB (average number belonging) purposes.

This rule modification is intended to expand the circumstances under which a district may include a student in the district's enrollment count for purposes of calculating ANB. The philosophy underlying ARM 10.20.106 is that a district should be able to include a student in ANB if the district maintains responsibility for the student even if the student is educated by someone else and if the education provider can demonstrate public accountability. The addition of a student with an individualized education program (IEP) is reasonable in this context. In the case of a student with an IEP, the district remains responsible for the student's education and therefore the district should be able to count that student for ANB purposes.

The retroactive application is intended to allow districts to include students with an IEP to be counted for ANB purposes in this current fiscal year.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to OPI, P.O. Box 202501, Helena, MT 59620-2501, or by e-mail to [opirules@state.mt.us](mailto:opirules@state.mt.us) and must be received no later than 5:00 p.m. on January 23, 2002.

6. Jeffrey A. Weldon has been designated to preside over and conduct the hearing.

7. OPI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education funding or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Services, OPI, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by OPI.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch  
Linda McCulloch  
State Superintendent  
Office of Public Instruction

/s/ Jeffrey A. Weldon  
Jeffrey A. Weldon  
Rule Reviewer

Certified to the Secretary of State December 16, 2002.